



Abortion in Northern Ireland: First Year Review of the Northern Ireland (Executive Formation etc) Act 2019

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The background of the entire page is a monochromatic blue-tinted photograph. It depicts a person in silhouette, seen from the side, looking out of a window. The window is on the right side of the frame, and bright light is streaming in from it. The interior wall and the person's silhouette are visible. The shadows of plants, possibly from a balcony or indoor garden, are cast onto the wall and the person's clothing, creating a complex pattern of light and shadow. The overall mood is contemplative and serene.

Briefing Paper

Abortion in Northern Ireland

**First year review of the Northern Ireland
(Executive Formation etc) Act 2019**

This briefing paper intends to set out the legal and policy changes implemented since the introduction of the Northern Ireland (Executive Formation etc) Act 2019.

We consider what has been achieved, what the challenges have been, and what remains to be done. We conclude with a series of recommendations based on this review.

The Reproductive Health Law and Policy Advisory Group is a joint initiative between academics interested in reproductive health and rights. Its founding members are Dr Fiona Bloomer (Ulster University), Dr Kathryn McNeilly (QUB) and Dr Claire Pierson (University of Liverpool), all of whom have extensive research backgrounds in the area of law and policy pertaining to issues of reproductive health. The Advisory Group has been established to provide expertise and knowledge on policy and legal matters related to reproductive health; to facilitate discussions and knowledge transfer between academics, policy and lawmakers, health professionals and stakeholder groups; and to provide advice on legal and policy reform.
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Background

As detailed in previous briefing papers (Bloomer, McNeilly, Pierson 2018a,b) in 2018 the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) published the results of an Inquiry into Northern Ireland's abortion law. This report concluded that the restrictive legal framework in place constituted grave and systematic violations of women's' rights (CEDAW, 2018). In the report, CEDAW made the following recommendations in two areas; **legal and institutional framework**, and **sexual and reproductive health rights and services**.

Regarding the former, the Committee recommended urgent repeal of sections 58 and 59 of the Offences Against the Person Act 1861 in order to decriminalise access to and provision of abortion. Alongside this, it recommended adoption of legislation which provided expanded grounds for access to abortion. The Committee also recommended an interim cessation to the application of the criminal law to women and healthcare professionals; evidence-based protocols for healthcare professionals providing legal abortions; mechanisms to monitor authorities' compliance with rights concerning sexual and reproductive health; and enhanced data collection around self-induced abortions between DHS and PSNI.

In regard to sexual and reproductive health rights and services, the report recommended that the state:

- Take action to provide rights-based counselling and information on sexual and reproductive health services.
- Ensure such services, and the provision of contraception, are accessible and affordable, provide access to high quality abortion and post-abortion care, including guidance on doctor-patient confidentiality.
- Reform sex education to ensure age-appropriate, comprehensive and scientifically accurate education.
- Intensify awareness-raising campaigns on reproductive and sexual health.
- Combat gender-based stereotypes regarding women's primary role as mothers.
- Protect those seeking abortion from harassment by anti-abortion protestors.

From 2018 onwards, a campaign by activists highlighted the significance of the CEDAW findings and, in light of the suspension of the Northern Ireland Assembly at the time, served to raise the need for change at Westminster. Stella Creasy MP availed of several Parliamentary opportunities to both highlight the issue and facilitate the recommendations of the CEDAW Committee via legislative change. This eventually took the form of an amendment to the Northern Ireland (Executive Formation etc) Act 2019 (NI ACT 2019) which was passed in July 2019 at Westminster with a considerable cross-party majority (332 in favour; 99 against).



Northern Ireland (Executive Formation etc) Act 2019

The purpose of the NI ACT 2019 was to provide the Secretary of State for Northern Ireland with interim powers to govern in the absence of the Northern Ireland Assembly. Section 9 of the NI Act deals with abortion law in Northern Ireland. Section 9 has two sub sections: firstly, it provides for decriminalisation of abortion in relation to sections 58 and 59 of the Offences Against the Person Act 1861 and a moratorium on abortion-related criminal prosecutions from 22 October; and secondly, it places the UK Government under a duty to bring forward regulations to introduce a new legal framework for abortion in Northern Ireland by 31 March 2020 (Aiken and Bloomer, 2019).

Whilst it was evident within NI ACT 2019 that the government wished for the Northern Ireland Assembly to take action on abortion, it was apparent that the three year suspension of the Assembly was likely to extend further. As a result, a sunset clause was included in the Act to avoid further delays in redressing the human rights violations raised by CEDAW. This clause stated that should the Assembly not resume its functions by 21st October 2019 abortion would be decriminalised. The deadline passed without restoration of the Assembly, and decriminalisation came into effect on this date, implementing significant elements of the recommendations made by the CEDAW inquiry.

In advance of the October deadline, Unionist parties triggered an Assembly recall via petition, with the intent to pass legislation in the form of a Defence of the Unborn Child Bill 2019. However, MLAs were informed that the Assembly could not undertake any business until a speaker was elected with cross-community backing. This became impossible when the SDLP left the chamber.

Consultation

The Northern Ireland Office (NIO) opened a consultation process on the new legal framework for abortion in November 2019. The consultation was formed of a series of questions relating to gestational limits for abortion, medical provision, conscientious objection and buffer zones. Over 21,000 responses were received from organisations, individuals and campaigning groups. [The collation of responses can be found here](#). NIO officials also talked to a range of stakeholders including the Northern Ireland Department of Health, healthcare professionals, Royal Colleges, the all-Ireland church leaders group, abortion service providers, trade unions, civil society organisation and those with lived experience of accessing abortion.

Abortion Regulations

Following the consultation, [the Abortion \(Northern Ireland\) Regulations 2020](#) were passed and came into effect in March 2020. The Regulations state that under no circumstances can a pregnant woman be held criminally liable for having an abortion. An offence can only be committed if someone intentionally contravenes the rules on certification and notification or provides an 'unlawful termination' (Rooney and McGuinness, 2020).

Access to abortion up to 12 weeks is permitted on request, thereafter conditions are applied. Abortion is permitted up until 24 weeks gestation in circumstances where the continuance of pregnancy involves a risk greater to the physical or mental health of the pregnant woman than if the pregnancy were terminated. Terminations to save the life of the pregnant woman or to prevent grave permanent injury are permitted with no gestational limit. Abortion is lawful in cases of severe foetal impairment or a fatal foetal anomaly.

The Regulations allow for an entirely nurse-led early medical abortion (EMA) service, an approach which reflects the NICE regulations for abortion services (NICE, 2019). Telemedicine abortion services were not included in the Regulations. This contrasts with the World Health Organisation advice on best practice (WHO, 2018) and a wealth of evidence that supports the effectiveness of telemedicine (Bloomer et al., 2018).

Conscientious objection is addressed within the Regulations, however, is not permitted when the treatment is necessary to save the life, or to prevent grave permanent injury to the physical or mental health of a pregnant woman. No provision was made for buffer zones outside clinics.

Abortion Services

As a result of the Covid-19 pandemic, the implementation of the regulations by the Department of Health Northern Ireland (DOHNI) was stalled. Unlike in the rest of the UK and in the Republic of Ireland, telemedicine abortion services were not introduced, contradicting the World Health Organisation's advice to provide such services during Covid-19 (WHO, 2020). Further proposed delays to the commissioning of services include the possibility that there is a requirement for Executive Committee (ministerial group) approval and a public consultation.

Despite the absence of commissioning, interim service provision began in April 2020. Providers in sexual and reproductive health (SRH) clinics, whose normal schedule of clinics had been suspended due to Covid-19, pivoted to providing EMA up until 9 weeks 6 days gestation. This service can be accessed via self-referral through Informing Choices NI (formerly fpani). One clear advantage of services being located within the SRH clinics is that they provide excellent access to, and uptake of, long acting reversible contraception (LARC). Within the first two months of being operational [350 women utilised the EMA service \(McLaughlin, 2020\)](#). Services for 10+ weeks gestations are offered, although not within each of the five health care trusts.



Challenges and Recommendations

As in many jurisdictions undergoing abortion law reform, challenges remain in Northern Ireland following the legislative change and publication of regulations governing access to services. These challenges include:

COMMISSIONING

1. Whilst the Northern Ireland Abortion and Contraception Task Group has been established to provide input into the commissioning, development and implementation of an abortion service, commissioning has yet to take place. The interim services put in place during Spring 2020 have been operating on a temporary basis whilst other services were suspended. Only three of the five health care trusts specifically committed to providing EMA in their Covid-19 rebuilding plans for service delivery for July-September 2020 (Belfast, Northern, and Southern; whilst South East and Western did not) (BHSCT 2020; NHSCT 2020; SHSCT 2020; SEHSCT 2020; WHSCT 2020). The DoHNI strategic framework for Covid-19 rebuilding fails to mention abortion services (DoHNI, 2020).
2. There is no clear pathway for abortion services at 10 weeks+ gestation.
3. At present there is still no surgical service. This contravenes NICE guidelines (2019) regarding women being offered a choice of abortion method. Whilst medical abortion is less risky and less resource dependent, surgical methods are often chosen for reasons of expediency and a preference that the foetal remains be dealt with by healthcare staff.
4. The lack of commissioning impacts on public information about the services and how to access them.
5. The lack of commissioning impacts on training for staff with no action plan as yet published on training needs and how these will be met.

Commissioning Recommendations:

Recommendation 1

Commissioning of services should occur as a matter of urgency.

Recommendation 2

This commissioning should include an action plan for clear information and signposting to service provision.

Recommendation 3

This commissioning should include an action plan for a programme of training and guidance should be provided for healthcare professionals.

TELEMEDICINE PROVISION

6. There is a clear absence of telemedicine provision in the Regulations. The challenges of Covid-19 brought this gap into sharp relief in the opening months of 2020 with corresponding challenges for access to abortion services. It is estimated that at least 10 women per week continue to access abortion medication from online providers such as Women on Web and Women Help Women, indicating demand for telemedicine provision. Potential future lockdowns will likely increase demand further.

Telemedicine Provision Recommendations:

Recommendation 4

The Minister for Health should enact powers provided in the Regulations to allow for telemedicine provision.

CEDAW

7. Further challenge to curtail the content of the Regulations may occur, as witnessed in the Northern Ireland Assembly motion to oppose abortion in cases of non-fatal foetal anomaly on 2nd June 2020. Challenges of this nature conflict with the binding nature of the Northern Ireland (Executive Formation etc) Act 2019, which sets out the necessity to fulfil the CEDAW Inquiry recommendations.
8. The potential for criminalisation of healthcare professionals who do not adhere to the Regulations warrants specific attention. Regulations 9(6) and 10(4) provide for an offence where someone "intentionally contravenes" the rules on certification and notification. Part 6 details an offence of 'unlawful termination' which may apply to medical professionals (subject to the defence they acted in 'good faith') and 3rd parties. This criminalisation was not contained in the CEDAW recommendations. It is without an evidentiary basis.

9. The Regulations failed to consider the implementation of buffer zones around clinics. Buffer zones are essential to address the harassment women may encounter when accessing services and staff. This was an issue raised by the CEDAW Committee in their Inquiry report recommendations.
10. The remaining CEDAW Inquiry recommendations are still to be addressed – while decriminalisation of abortion and legislative change was a significant part of the CEDAW recommendations, the Committee did advise that other actions were necessary to address the rights violations at hand. These include access to rights-based counselling; reform of sex and relationship education; enhanced awareness-raising and public information campaigns; and improved access to contraception and other sexual health services. Without also addressing these recommendations, the CEDAW report cannot be viewed as implemented in its entirety.

CEDAW Recommendations

Recommendation 5

Policy makers should review the CEDAW recommendations and ensure they abide by them. To enhance this, policy makers should meet with the Northern Ireland Abortion and Contraception Task Group to engage with health professionals providing abortion services.

Recommendation 6

Amendment of the Regulations to remove criminalisation of healthcare professionals.

Recommendation 7

Publication of an action plan which will allow for the remaining CEDAW recommendations to be addressed.

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A woman is shown in silhouette, looking out of a window. The scene is bathed in a deep blue light. In the foreground, the silhouettes of plants are visible, partially obscuring the view. The woman's hands are clasped in her lap.

Briefing Paper

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(Executive Formation etc) **Act 2019**